

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN BILL TASH**, on February 08, 1999 at 3:02 P.M., in Room 437 Capitol.

ROLL CALL

Members Present:

Rep. Bill Tash, Chairman (R)
Rep. Hal Harper, Vice Chairman (D)
Rep. Cindy Younkin, Vice Chairman (R)
Rep. Rod Bitney (R)
Rep. Aubyn A. Curtiss (R)
Rep. Bill Eggers (D)
Rep. Ron Erickson (D)
Rep. David Ewer (D)
Rep. Gail Gutsche (D)
Rep. Joan Hurdle (D)
Rep. Dan McGee (R)
Rep. Douglas Mood (R)
Rep. Scott J. Orr (R)
Rep. Bob Raney (D)
Rep. Bob Story (R)
Rep. Jay Stovall (R)
Rep. Carley Tuss (D)
Rep. Doug Wagner (R)

Members Excused: Rep. Rick Dale (R)
Rep. Karl Ohs (R)

Members Absent: None.

Staff Present: Deb Thompson, Committee Secretary
Kathleen Williams, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 486, 2/10/1999; HB 487,
2/10/1999; HB 505, 2/10/1999
Executive Action: HB 340

HEARING ON HOUSE BILL 486

Sponsor: Rep. Shiell Anderson, HD 25, said the bill would give institutional control to local government bodies to clarify clean up responsibilities. This would define "institutional control", allows institutional controls by land owners without transfer the property to somebody else, and provide a framework for the removal of these controls.

Proponents: Steve Wade, RODEA-formerly Rhone Polenc in Butte, spoke in favor of the bill. He said this would allow for quicker and more cost effective cleanup. He said this would allow a person to put institutional controls, filing an instrument of burden to the property which runs with the land and is binding on all successors of interest. This clears up problems of enforce ability. The bill also provides a mechanism to remove institutional controls when the risk is no longer there. This will allow property to be more marketable once the cleanup has been achieved and there is no longer a risk associated with the property. He noted that Bob Brown from Columbia Falls Aluminum, who could not attend the hearing, asked to be listed as a proponent. **{Tape : 1; Side : A; Approx. Time Counter : 6.6}**

Leo Berry, Burlington Northern Santa Fe, pointed out page 13, line 26, and explained the purpose. He described a situation encountered where a facility on their property went bankrupt. Burlington Northern Santa Fe was obligated under the superfund to clean that site up. This was not a problem but the issue of insurance coverage on the bankrupt facility. The old policy could have been claimed against to clean up the facility. The DNRC said if there was a potential of insurance coverage you could not recover from the Orphan's Share account. The section addresses this issue regarding a private party suing a financially responsible party, like a bonding company or insurance company, and they are successful on behalf of the Orphan, that money gets credited to the Orphan Share account - less the litigation cost to bring the action. The bill would address the recovery of litigation costs.

Troy Harbard, the environmental manager for Pacific Steel and Recycling in Great Falls, encouraged the committee to pass the bill. He said to date they have successfully used this law to clean up four sites. This works very well and he encouraged continuation of this. They support the institutional control. They have used it in other states. It is a very successful way to take a scrap yard and make it protective of human health and the environment. It works well at the federal level and other states.

Mark Simonich, Director of Department of Environmental Quality, spoke in support of the bill. He pointed out there were some language concerns but they believed in the concept of institutional controls. These legal restrictions on the use of property can be an important means of ensuring that people are not exposed to hazardous substances or that elements of clean up of that repository have not been disturbed. The big debate regarding institutional controls is the extent that they may be substituted for clean up rather than used to insure or enhance the protectiveness of a cleanup. He pointed out it would not be good to have a lot of land sealed off with fences and legal restrictions on its use and then not be cleaned up. Where institutional controls are appropriate it is important that a mechanism be clear and enforceable. **{Tape : 1; Side : A; Approx. Time Counter : 12.2 - 21.4}**

Don Allen, Western Environmental Trade Association, spoke in support of the bill.

Chris Gallus, Montana Chamber of Commerce, spoke in support of the bill.

Opponents: Anne Hedges, Montana Environmental Information Center, talked about her concerns. The definitions of institutional controls should be consistent. She explained that institutional controls do not mitigate the risk but rather protect the public from a site. **{Tape : 1; Side : A; Approx. Time Counter : 22.7 - 31}**

Questions from Committee Members and Responses: Rep. Erickson asked about sacrifice zones and if institutional controls had hidden problems. Simonich replied he was referring to HB 331 which tried to give local governments some control, recognizing that when the department is faced with working with responsible parties to do a clean up, the most appropriate remedy is determined. There are many cases where the clean up of that property need some protection for the long term, either they can't be cleaned up completely or a repository needs to remain intact. The department thinks institutional controls are appropriate, recognizing they need to be a part of the total remedy.

Rep. Harper noted that people were afraid that institutional controls would become a substitute for cleanup. He said there could be problems associated with removal of the controls, regarding the transfer and maintenance of damaged lands forever. He asked why institutional controls were not being referred to in a temporary sense. Simonich said an institutional control may have to be permanent. Once you create a repository you don't

want somebody digging into that. These control are institutionalized to make sure that remedy stays in place.

{Tape : 1; Side B}

Closing by Sponsor: Rep. Anderson discussed a technical amendment **EXHIBIT(nah31a01)**. He pointed out the department must approve the institutional controls. This bill does not set up sacrifice zones because the owner of real property wants to make that property as marketable as possible. He might want institutional controls because he is continuing to use that property. Later if technology is available it would allow remediation to remove institutional control.

HEARING ON HOUSE BILL 487

Sponsor: Shiell Anderson, HD 25, presented the bill. The bill allows for CI-75 compliance. It removes the termination date for the department to collect the fees for oversight of the cleanup plans. ***{Tape : 1; Side : B; Approx. Time Counter : 7.7 - 8.3}***

Proponents: Steve Wade, RODEA, supported the bill.

Opponents: None

Questions from Committee Members and Responses: Rep. Hurdle asked for an explanation about the fee for reimbursement of the remedial action costs. She asked if the DNRC had to recover the costs even with voluntary cleanup. Simonich replied the DEQ would recover its costs in reviewing the applicants proposal and the way the responsible parties are going to do the cleanup. The law allows for voluntary cleanup but doesn't just allow the party to go out and do whatever they want without any kind of oversight from the department. The reason this bill is necessary is that the voluntary cleanup program was set to sunset. CI-75 was set up so that anytime a department had to collect a new fee it had to go before a vote of the public. Even this is cost collection it is considered a new fee thereby needing to be approved by a public vote.

Closing by Sponsor: Rep. Anderson closed.

HEARING ON HOUSE BILL 505

Sponsor: Rep. Dan Fuchs, HD 15, presented the bill. He said the bill would allow counties to either develop or dispose of unused properties and get the properties back on the tax rolls.

Proponents: Byron Roberts, Montana Building Industry Association, spoke in favor of the bill. Their industry studied the whole issue of housing affordability and land development. Housing costs have doubled, lot costs have tripled and salaries have remained stagnant. The association worked with builders, realtors, Board of Housing, architects, and engineers and this was one proposal they came up with. Montana is unique in that there is a law that requires people who are creating subdivisions have to donate a 1/9 to 1/12 of their land for parks purposes. A lot of local governments have been given land and it sits in the middle of a subdivision, undeveloped and there has been no real planning at the local level as to how parks should be created based on this law. This bill would mandate that local governments, if they are going to take land or cash in lieu of land, that they have a parks plan in order to develop parks. It also allows to local governments the opportunity to sell existing parcels of land. **{Tape : 1; Side : B; Approx. Time Counter : 24.4 - 26.9}**

Margaret Morgan, Montana Association of Realtors, spoke in favor of the bill. If a parcel of land, dedicated for a park, has not after a reasonable period of time been used for that purpose, it makes sense that it would revert back to the developer. Twenty years is a reasonable length of time. If within that time, the land has not been used for a park and it is not desirable for a park or needed.

Opponents: Linda Stohl, representing the Montana Association of Planners, discussed the concept of park land. The technical problems for those who have to administer this is why the association is an opponent. There is no formula to find the subdivider or the heirs after 20 years. Much of the park land was not intended to be "developed". **EXHIBIT(nah31a02)**

Jane Jelenski, representing the Montana Association of Counties, spoke as an opponent. She said we need to be able to meet today's needs without compromising the next generation. Montana's Subdivision and Platting Act is the first in the nation to provide for park land, which is the basis of quality of life. It is a problem tracking the original developers and heirs since the land has changed hands over time. This might force developers to take back undesirable land. **{Tape : 1; Side : B; Approx. Time Counter : 35}**

Janet Ellis, Montana Audubon Society, spoke as an opponent. She pointed out many open space parks were riparian areas. These areas should not be developed. **EXHIBIT (nah31a03)**

Anne Hedges, Montana Environmental Center, pointed out communities should plan for parks and incentives should be provided. She suggested a five year period rather than twenty years. The park should be kept with the community and not given to the developer who many not want it back.

Janie McCall, City of Billings, said she was concerned with the effective date. She said there is not enough open space. This space should be set aside for the future.

Questions from Committee Members and Responses: Rep. McGee asked where government bodies could sell park land currently. Ms. Jelinski replied a public hearing would be needed to auction off the land. She referred to section 7-16-23-24 regarding the sale and lease of dedicated park land. Rep. McGee clarified during the subdivision process an individual is required to donate the land or cash, which is taken without compensation. The compensation is that they may get approval of the subdivision. He said this means it is required by law, taken by the government, held for up to twenty years by the county and then the county can sell it at a market value. Ms. Jelinski replied they can sell it prior to twenty years but the money would go into the trust fund.

Rep. McGee asked for a definition of "dispose". He pointed out the opponents did not know what would happen with the land. He read the definition out of the dictionary. To place or set in a particular order, to arrange, to put into correct definitive or conclusive form, to make willing or receptive for, or to get rid of. He asked if this language addressed those concerns about the ability of the county to use the land for something other than "disposing", as in getting rid of. Rep. Fuchs said the intent of the legislation was to encourage them to develop a park plan and allow them to dispose of, to develop, to get rid of one tract that is not beneficial use and to develop others, instead of accumulating.

Rep. McGee asked Ms. Ellis if the word "disposed" worked better than "developed". Disposed would be compliant with the park plan. Ms. Ellis replied that she read the term "disposed" as getting rid of. The section referred to 7-16-23-24 is all about the sale and this is in pursuant to that section. A more common definition of disposal needs to be clarified.

Rep. Bitney noted this bill had potential. He pointed out many people may not want the land. He said there were different kinds

of parks, such as homeowners parks, or a municipality. Rep. Fuchs replied the language could be amended. This was just to encourage them to get a park plan in place and develop or manage these parks. **{Tape : 1; Side : B; Approx. Time Counter : 51.2}**

Rep. Story pointed out there were a lot of subdivisions that were platted out and the park land developed but had lots still available. There is no incentive for anyone to develop that park land or do anything with it. This proposal, after 20 years and there are still no lots sold would that land revert back. Rep. Fuchs replied the amount of years is not significant. This is not retroactive.

Rep. Erickson asked how many park plans were out there. Ms. Jelinski replied the question was should the county have a park plan. The intent is right if the bill passes. She suggested making the bill effective in a couple of years so the county had time to prepare these plans.

Rep. Erickson asked about the dictionary definition of "dispose" if that meant "get rid of" and should this be clarified. Rep. Fuchs replied this was hair splitting. Rep. Younkin suggested replacing the word with "utilize". She pointed out a park plan could include a primitive trail. Rep. Fuchs responded the word "utilize" would allow some flexibility. The intent was to encourage more communities to get park plans. Rep. Younkin noted the difficulty in reverting to the original subdivider. A park plan adopted under this legislation should have the ability to permit preservation of or use of open space.

Rep. Raney pointed out the dictionary definition for "park" included "natural state". **{Tape : 2; Side : A; Approx. Time Counter : 0}**

Closing by Sponsor: Rep. Fuchs closed. He agreed with the importance of open space and park land. The intent of the bill was to encourage the counties to develop park land and park plans. It would be a benefit to the county where they could find the money to develop other park areas.

EXECUTIVE ACTION ON HOUSE BILL 340

Rep. McGee **MOVED DO PASS.** He pointed out the need to address professional land surveyors rather than registered. Kathleen Williams clarified the definition was addressed in the codes as a registered land surveyor.

Rep. Harper discussed the removal of a marker in a subdivision.
Rep. Stovall discussed plowing a section and destroying a marker.
Rep. McGee explained the use of the corner recordation form.

{Tape : 2; Side : A; Approx. Time Counter : 7.3 - 27.2}

The question was called. The motion **PASSED** with two no votes by
Reps. Harper and Stovall.

ADJOURNMENT

Adjournment: 5:35 P.M.

REP. BILL TASH, Chairman

DEB THOMPSON, Secretary

BT/DT

EXHIBIT (nah31aad)